



## "MENTAL-MENTAL" WORKERS' COMPENSATION IN NEARBY STATES

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### "MENTAL-MENTAL" COVERAGE IN CT

While Connecticut's workers' compensation law provides benefits for mental or emotional impairments that stem from a work-related physical injury, it limits benefits for those arising from a mental or emotional injury ("mental-mental") injuries to:

1. police officers who use, or are the target of, deadly force in the line of duty and
2. firefighters who are diagnosed with post-traumatic stress disorder (PTSD) caused by witnessing another firefighter die in the line of duty.

In addition, the benefits provided in these instances are limited to treatment by approved psychologists or psychiatrists and do not include wage replacement benefits (CGS §§ [31-275](#) and [31-294h](#)).

### QUESTION

Do nearby states allow for stress-related (sometimes called "mental-mental") workers' compensation benefits?

### SUMMARY

Nearby states (Massachusetts, New Jersey, New York, and Rhode Island) generally provide workers' compensation benefits for stress-related injuries that do not result from a physical injury. These types of injuries are often referred to as "mental-mental" injuries because they are caused by a purely mental stimulus (such as witnessing, but not being physically injured by, a particularly horrific workplace incident) that leads to a mental or emotional impairment, such as depression or post-traumatic stress disorder (PTSD). In contrast, Connecticut law generally limits compensation for mental-mental injuries to specific incidents involving police and firefighters (see sidebar).

Over the years, all four nearby states have refined and limited the scope of their mental-mental coverage. This report addresses the broad outlines of these states' mental-mental coverage, particularly as

expressed in their workers' compensation statutes, and provides some general context surrounding them. It does not address all of the many nuances and distinctions that have developed through each state's respective case law.

## MASSACHUSETTS

Massachusetts' workers' compensation law considers mental or emotional disabilities "personal injuries" (and thus eligible for benefits) if their predominant contributing cause is an event or series of events occurring within any employment. However, the mental or emotional disability cannot have arisen principally from a bona fide personnel action, including a transfer, promotion, demotion, or termination, unless the action was intended to inflict emotional harm ([Mass. Gen. Laws ch. 152, § 1\(7A\)](#)).

As interpreted by the state's courts, the requirement that a workplace "event" (as opposed to injury) be a *predominant* cause of an employees' mental or emotional disability sets a higher compensability standard than the state's workers' compensation law requires for physical injuries. Physical injuries, in general, need only arise out of, and in the course of, the employee's employment to be compensable (*Laura Cornetta's Case*, 68 Mass. App. Ct. 107 (2007)).

## NEW JERSEY

New Jersey's workers' compensation statutes do not differentiate between physical and mental or emotional injuries. Instead, they define a "compensable occupational disease" as "including all diseases arising out of and in the course of employment, which are due in a material degree to causes and conditions which are, or were characteristic of, or peculiar to, a particular trade, occupation, process or place of employment," ([N.J. Rev. Stat. § 34:15-31\(a\)](#)).

The state's Supreme Court decision in *Goyden v. State of New Jersey* (128 N.J. 54 (1992)) helped establish the conditions for mental-mental benefits in the state. In *Goyden*, a court filing clerk sought workers' compensation benefits for a psychological illness arising from a stressful work condition (a dramatically increased workload). The state's workers' compensation court initially found the clerk eligible for benefits, but a state appellate court reversed the decision because it found the clerk had a "compulsive personality" which predisposed him to suffer from the mental condition that disabled him.

The state's Supreme Court, however, overturned that decision, arguing that the appellate court effectively imposed a new condition for determining compensable workplace injuries by requiring that a worker's response to workplace conditions be objectively reasonable. To the contrary, the Court held that (1) any workplace injury was compensable if it was induced by conditions peculiar to the claimant's

work (and not general stress typical of all types of work) and (2) the cause of the illness did not have to be a discrete event, but could instead be a gradual exposure to cumulative job-related factors, including stress.

## **NEW YORK**

New York is similar to New Jersey in that its workers' compensation statutes generally do not distinguish between physical and mental or emotional injuries and the courts have consistently held that mental or emotional injuries arising out of and in the course of employment can be compensated. However, like Massachusetts, New York's law also specifically excludes from benefit eligibility injuries that are solely mental and based on work-related stress if the mental injury is a direct consequence of a lawful personnel decision involving a disciplinary action, work evaluation, job transfer, demotion, or termination taken in good faith by the employer ([N.Y. Workers' Compensation Law § 2 \(7\)](#)).

New York's courts have also required mental-mental claims based solely on work-related stress to show that the stress was greater than that which usually occurs in the normal work environment. This determination is generally left to the Workers' Compensation Board, which determines claims at the administrative level, and is not disturbed by the courts if it is supported by substantial evidence (*Matter of Potter v. Curtis Lbr. Co., Inc.*, 782 N.Y.S. 2d 170 (2004)). Similar to New Jersey, New York's courts have also held that mental or emotional injuries do not need to have been caused by a discrete, identifiable trauma, but can also occur as the result of prolonged, unusual circumstances (*Matter of La Mendola v. Butler*, 578 N.Y.S.2d 280 (1992)).

## **RHODE ISLAND**

Rhode Island's workers' compensation law specifically provides compensation for "a mental injury caused by emotional stress resulting from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily without serious mental injury," ([R.I. Gen. Laws § 28-34-2 \(36\)](#)).

This statute itself stemmed from the Rhode Island Supreme Court's decision in *Seitz v. L&R Industries, Inc.*, (437 A.2d 1345 (1981)). In that case, the Court conducted an extensive review of mental-mental coverage in other jurisdictions. It concluded that although other courts were reluctant to deny compensation for genuine disabilities arising from psychic injuries, if such injuries were to be compensable, the stimulus causing the injury must be "dramatically" more stressful than "the intensity of stimuli encountered by thousands of other employees and management personnel every day." The state's General Assembly enacted the

language currently found in § 28-34-2 (36) one year after the *Seitz* decision and in 1991, the Court has found that the statute “in essence codified the doctrine of *Seitz*,” (*Moreno v. Nulco Mfg. Corp*, 591 A.2d 788 (1991)).

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